

**BY-LAWS  
OF  
BOW-MAR OWNERS, INC.**

**I. OFFICERS OF CORPORATION**

1. *Officers:* The regular officers of this Corporation shall be a President, a Vice-President, a Treasurer and a Secretary, who shall be elected by a majority of the entire Board of Directors at their annual meeting. The Board of Directors may elect the same Director to any two of such offices other than President and Secretary. All such officers shall be elected from among the members of the Board of Directors only and shall serve for the term of one year and until their successors shall have been elected and qualified, unless they shall resign, be removed or become disqualified as provided by these By Laws.

2. *Vacancy in Office:* If a vacancy occurs in any regular office, that vacancy shall be filled by the election by a majority of the entire Board of Directors of one of their members at their first meeting, whether regular or special, after the vacancy occurs. A vacancy in an office shall be filled for the remainder of the term of that office.

3. *Absence or Disability of Officers:* The majority of the entire Board of Directors may, in case of the absence of any officer or his or her inability to perform his or her duties, or for any other reason deemed sufficient by them, temporarily delegate the power and duties of such officer to any other director, or remove him or her from that office and elect some other director to serve in his or her stead.

4. *Other Officers or Agents:* The President, with the approval of the Board of Directors, may appoint such other officers or agents as the Board may deem necessary, who shall hold office at the pleasure of the Board and who shall have such authority and perform such duties as from time to time may be prescribed by the President with the approval of the Board.

5. *Compensation of Officers:* No officer of this Corporation shall receive any compensation for his or her services to the Corporation.

**II. BOARD OF DIRECTORS**

1. *Duties and Composition of Board:* The Board of Directors shall consist of nine qualified members of the Corporation. It shall be the duty of the Board of Directors to exercise general supervision over the management of the affairs of the Corporation to receive and pass upon the reports of the President, Secretary, and Treasurer; to set annual membership dues within the limitations set forth in the Articles of Incorporation; to audit all bills and accounts against the Corporation; and to direct the officers thereof in the general conduct and business of the

Corporation. The Board of Directors shall have the control of any books, papers, or documents of the Corporation in the hands of the officers.

2. *Election; Term of Directors; Vacancies:* Not later than 30 days prior to the annual meeting of the members in each year, the Nominating Committee of the Board of Directors shall nominate, pursuant to such procedures as the Board of Directors may determine from time to time, a number of individuals for election that is not less than the number of Directors whose terms are due to expire, plus the number of vacancies among the Directors that have not previously been filled. The names of the individuals thus nominated shall be stated in the notice of the annual meeting of the members of the Corporation. Additional nominations from among those present at the annual meeting of the members may be made from the floor. At the annual meeting of the members, the members shall elect by majority vote the number of the individuals thus nominated necessary to fill the positions of the Directors whose terms are due to expire and any vacancies among the Directors that have not previously been filled, provided that if there are more individuals nominated than positions to be filled, then the individuals receiving the greater number of votes shall be elected, and provided further that, of the individuals thus elected, the individuals receiving the lesser number of votes shall be elected to serve for the remainder of the unexpired term of any vacancies among the Board of Directors. Individuals who have been elected as Directors (other than those elected to fill vacancies) shall hold such office for a term of three years and shall hold office until the annual meeting of the members occurring at the expiration of their terms and until their successors have been elected and qualified.

If a vacancy occurs on the Board, that vacancy shall be filled by the election of a qualified member by a majority of the whole Board at a regular or special meeting not later than sixty (60) days after the vacancy shall have occurred. The member thus elected by the Board to fill a vacancy shall serve until the next annual membership meeting following his or her election to the Board. At that meeting, the membership shall elect a qualified member to serve for the remainder of the unexpired term, whether it be for one or two years.

3. *Qualification of Directors:* No person shall be eligible for election or to serve as a director who is not a resident regular or senior member of the Corporation, and the forfeiture of such membership by a director shall operate as his resignation and create an immediate vacancy on the Board.

4. *Removal of Directors:* Any director may be removed from the Board, for cause, by a majority vote of the members at any regular or duly called special meeting of the members. Cause for removal of any director from the Board shall be construed to mean, generally, failure for any reason to perform satisfactorily his or her duties, or any act or omission which may bring discredit to the Corporation or the Board of Directors. The decision of the members shall be final in all cases.

5. *Compensation of Directors:* No director of this Corporation shall receive any compensation for his or her services to the Corporation.

### III. DUTIES OF OFFICERS

1. *Duties of President:* It shall be the duty of the President to preside at all meetings of the members and directors of the Corporation. Subject to the direction of the Board of Directors, the President shall be the chief executive officer of the Corporation and shall perform such other duties as from time to time may be assigned to him or her by the Board. The President shall be ex-officio a member of all committees.

2. *Duties of Vice-President:* It shall be the duty of the Vice-President to assist the President in the performance of his or her duties. In case of the absence, sickness or other disability preventing the President from performing the duties of his or her office, the Vice President shall perform and discharge the duties and functions of the President. In case of the absence of the Secretary, the Vice-President shall perform and discharge the duties and functions of the Secretary.

3. *Duties of Secretary:* Subject to the direction of the Board of Directors, it shall be the duty of the Secretary to provide proper notice of all meetings to the members of the Corporation and act as clerk thereof; to keep, record, sign and preserve the minutes of all meetings of the members and directors in appropriate records; to have the custody of the corporate seal; to attest and affix the seal to all contracts and other instruments of writing required by law to be executed by him or her or under the corporate seal of the Corporation; to have charge of and preserve all papers and documents of the Corporation not properly belonging to the custody of the Treasurer; to perform, in general, all such duties as usually pertain to the office of Secretary; to perform such other duties as may be assigned specifically to him or her by the Board of Directors; and to attend to the filing of all papers and reports required by law.

4. *Duties of Treasurer:* The Treasurer shall be the custodian of the funds of the Corporation and of all securities, valuable papers and documents connected with and pertaining to the business of the Corporation. Such documents shall be kept in such manner as may be ordered by the Board of Directors. The Treasurer shall disburse the funds of the Corporation in accordance with the orders of the Board of Directors. The Treasurer shall keep complete and proper cash and voucher accounts of all funds on hand or disbursed, which records shall be accessible for inspection by the Board of Directors whenever it may require. The Treasurer shall render to the Board of Directors, whenever they may require, an account of all transactions and the financial condition of the Corporation, and perform such other duties as may be prescribed by the Board of Directors. The Treasurer shall be required to give a bond in such amount and form as the Board shall require for the faithful performance of the Treasurer's duties, the cost of which shall be paid by the Corporation.

### IV. MEETINGS OF BOARD OF DIRECTORS:

1. *Regular Meetings:* The Board of Directors meet for the transaction of business on the third Thursday of each month. Such meetings shall be held normally within the geographic limits of the Corporation. However, from time to time such meetings may be held at any other time and place for the convenience of the Board of Directors or any member thereof.

2. *Special Meetings:* Special meetings of the Board of Directors may be called by the President or any three members of the Board for any time and place, provided reasonable notice of such meetings shall be given to all available members of the Board of Directors before the time appointed for such meeting.

3. *Annual Meeting:* The first meeting of the Board of Directors after the annual membership meeting shall be the annual directors meeting.

4. *Quorum – Board of Directors:* At all meetings of the Board of Directors, five directors shall be required to constitute a quorum for the transaction of business. The official act or acts by a quorum of the Board of Directors at any meetings shall be valid and binding unless otherwise provided by law or by these By-Laws.

5. *Action Without a Meeting.* Any action required by law to be taken at a meeting of the Board of Directors, or any committee thereof, or any other action which may be taken at a meeting of directors, or any committee thereof, may be taken without a meeting if every member of the board in writing either: [a] votes for such action or [b] votes against such action or abstains from voting and waives the right to demand that a meeting be held. Action is taken only if the affirmative votes for such action equals or exceeds the minimum number of votes that would be necessary to take such action at a meeting at which all of the directors then in office were present and voted. The action shall only be effective if there are writings which describe the action, signed by all directors, received by the Corporation and filed with the minutes. Any such writings may be received by electronically transmitted facsimile or other form of wire or wireless communication providing the Corporation with a complete copy of the document including a copy of the signature. Actions taken shall be effective when the last writing necessary to effect the action is received by the Corporation unless the writings set forth a different date. Any director who has signed a writing may revoke it by a writing signed, dated and stating the prior vote is revoked. However, such writing must be received by the Corporation before the last writing necessary to effect the action is received. All such actions shall have the same effect as action taken at a meeting and may be stated as such in any document.

6. *Telephonic Meetings.* The Board of Directors may permit any director (or any member of a committee designated by the board) to participate in a regular or special meeting of the Board of Directors or committee thereof through the use of any means of communication by which as directors participating in the meeting can hear one another during the meeting. A director participating in a meeting in this manner shall be deemed to be present in person at such meeting.

7. *Standard of Conduct for Directors.* Each director shall perform his or her duties as a director, including without limitation his or her duties as a member of any committee of the board, in good faith, in a manner the director reasonably believes to be in the best interests of the Corporation, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. In the performance of his or her duties, a director shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by the persons designated below, unless the director has knowledge concerning the matter in question that would cause such reliance to be unwarranted. A

director shall not be liable to the Corporation or the Members for any action the director takes or omits to take as a director if, in connection with such action or omission, the director performs his or her duties in compliance with this Section. A director, regardless of title, shall not be deemed to be a trustee with respect to the Corporation or with respect to any property held or administered by the Corporation including, without limitation, property that may be subject to restrictions imposed by the donor or transferor of such property.

The designated persons on whom a director is entitled to rely are: [a] one or more officers or employees of the Corporation whom the director reasonably believes to be reliable and competent in the matters presented; [b] legal counsel, a public accountant, or other person as to matters which the director reasonably believes to within such person's professional or expert competence; or [c] a committee of the board of directors on which the director does not serve if the director reasonably believes the committee merits confidence.

8. *Conflicts of Interest.* The Board of Directors acknowledges that conflicts of interest may occasionally arise and that neither the elimination from the board of all persons who might potentially have any such conflict nor the avoidance of all transactions involving a conflict of interest would necessarily serve the best interests of the Corporation. Nonetheless, each member of the Board of Directors is encouraged to avoid undisclosed conflicts of interest and to refrain from influencing the board's action on a matter in which such director is financially interested. It is therefore the policy of the Corporation to avoid the participation of any director in the Board of Directors' consideration of a matter which poses a conflict of interest for that director.

- [a] For these purposes, a conflict of interest shall be deemed to arise whenever a matter under consideration involves the potential for significant benefit to a director or to any business, financial, or professional organization of which the director or a member of such director's immediate family is an officer, director, members, owner, or employee.
- [b] Whenever any matter comes before a meeting of the Board of Directors which gives rise to a potential conflict of interest, the affected director shall make known the conflict to the remaining directors present at such meeting, shall, after answering any questions posed by the other directors, withdraw from the meeting for as long as the matter is under consideration, and shall neither be present nor cast a vote.
- [c] If the withdrawal of the affected director results in the absence of a quorum, no action shall be taken on the matter in question until a quorum of disinterested directors can be established.
- [d] The minutes of a meeting at which a conflict of interest arises shall reflect that a disclosure was made, the affected director's withdrawal from the meeting and abstention from voting, and, if action is taken on the matter, the continued presence of a quorum.

- [e] As with all other matters coming before the Board of Directors, the disinterested directors shall act upon a matter that poses a conflict of interest for another director in a manner which they reasonably and in good faith believe to be in the best interests of the Corporation.

## V. MEMBERSHIP

1. *Regular and Senior Membership:* The Articles of Incorporation limit membership eligibility to owners of property described in Article III thereof. A membership may be held individually or by a husband and wife as joint tenants or tenants in common.

2. *Application for Membership:* Application for membership shall be made upon forms provided by the Board of Directors and shall include such information and references in support of the application as shall be deemed appropriate by the Board of Directors. Such application shall be accompanied by an initiation fee and such annual dues as are herein provided.

3. *Procedures for Membership Admission:* All natural persons who meet the conditions and qualifications for membership in the Corporation shall apply for membership and shall be admitted as members of the Corporation pursuant to such procedures as the Board of Directors may establish from time to time.

4. *Forfeiture of Membership:* The conveyance by a member of title to his or her lot shall automatically forfeit and cancel the membership.

5. *Transfer of Membership:* A member who acquires a second lot in Bow-Mar may request the transfer of his or her membership to the new lot prior to the disposition of the lot covered by the existing membership and no charge shall be made for such a transfer.

6. *Temporary Membership – Rental or Lease of Improved Property:* One who rents or leases improved property within the Town of Bow-Mar is eligible to apply for temporary membership while in occupancy and shall become a temporary member of the Corporation upon payment of such initiation fees and annual or monthly dues as the Board of Directors may establish from time to time. A temporary membership entitles the owner thereof to all the privileges of a regular membership except the right to vote or to serve on the Board of Directors.

7. *Non-Resident Membership:* Non-resident owners of eligible property are eligible to apply for membership, but shall not be eligible to serve on the Board of Directors.

8. *Ownership of Multiple Lots in Bow-Mar:* A regular member may not extend his or her membership privileges to a renter or lessee of any property the member may own in Bow-Mar.

9. *Honorary Membership:* Upon approval of a majority of the Board of Directors, honorary memberships may be extended to any worthy person. Honorary members shall pay such dues or may be excused from the payment of all dues, and shall be entitled to honorary membership

for such period or periods of time, as the Board of Directors may determine from time to time. Honorary members shall not be entitled to vote or to serve on the Board of Directors.

10. *Special Membership*: Because special conditions of residency not described in these By-Laws may occur, the Board shall have full discretion, in its review and evaluation of such conditions, to determine membership eligibility on a case by case basis.

## **VI. MEMBERSHIP MEETING OF THE CORPORATION**

1. *Annual Membership Meeting*: The annual meeting of the members of the Corporation shall be held within the first two weeks of November of each year at such place in or near the Town of Bow-Mar, Colorado, as shall be designated by the Board of Directors; the location of the meeting shall be stated in the notice to members of such meeting.

2. *Special Membership Meetings*: Special meetings of the members of this Corporation may be authorized at any time by resolution of the Board of Directors, or upon the written request of not fewer than twenty-five voting members.

3. *Notice – Membership Meetings*: Notice of the annual and any special meeting of the members shall be prepared by the Secretary of the Corporation and delivered or mailed to each member at least ten days before the date of such meeting. Publication of such notice in the Bow-Mar Bulletin shall be deemed sufficient to satisfy the requirements of notice. All notices of special meetings shall state the purposes of the meetings, and no business shall be transacted at any special meetings except that stated in the notice hereof.

4. *Quorum Membership Meetings*: At all duly called annual or special meetings of the members, official business may be conducted by a majority vote of the members present.

5. *Voting – Membership Meeting*: Every regular, senior and non-resident membership shall be a voting membership. Every voting membership is entitled to two votes, to be cast either in person or by proxy, at every membership meeting for the election of directors and upon every question submitted to vote. Such membership, whether held by an individual, by joint tenants or by tenants in common, may have its two votes cast together or separately as those who hold the membership may choose. For the purpose of establishing a voting majority, members voting by proxy shall be counted as present. The instrument authorizing the proxy to act shall state whether it authorizes the casting of both votes to which the membership is entitled, and shall be signed by each person in whose name the membership is held. The proxy shall contain the following:

“I, we hereby authorize \_\_\_\_\_ to cast  
[one (1)] [two (2)] [circle one] votes in my, our behalf at the meeting  
to be held on \_\_\_\_\_.”

The inapplicable words and figures in the proxy instrument shall be crossed out.

6. *Election of Directors:* The election of directors shall be by secret ballot, and every voting membership is entitled to two votes for each position to be filled.

## **VII. INITIATION FEES AND ANNUAL DUES**

1. *Initiation Fee:* The initiation fee for each type of membership shall be set by the Board of Directors.

2. *Annual Dues:* The annual dues for all classes of membership in the Corporation shall be set by the Board of Directors. If the effective date of membership is between August 1 and November 1, the dues assessed shall be one-half the annual dues for such membership; if after November 1, no dues will be assessed that year.

3. *Delinquent Dues:* The annual dues for all memberships are due and payable on or before March 1 of each year. If the dues are not paid by then, the Board of Directors may publish the name of the delinquent membership in the next issue of the Bow-Mar Bulletin and may, at its discretion, withdraw the privileges of membership for such delinquent members. The Board of Directors may, upon payment in full of unpaid dues reinstate the membership to good standing without the payment of a new membership fee, provided the period of delinquency has not exceeded one year.

4. *Reinstatement of Membership.* Any individual who had previously been a regular or senior member of the Corporation and who voluntarily terminated such membership but subsequently reapplies for membership and is eligible for membership in the Corporation shall become a regular or senior member, as the case may be, upon payment of either a new initiation fee applicable to such membership or all dues that such individual would have paid had such individual's membership not terminated.

## **VIII. MEMBERSHIP AND GUEST PRIVILEGES:**

All memberships entitle the holders thereof and the members of their immediate families who reside with them to the full use of the facilities provided by the Corporation subject to the current rules and regulations of the Corporation. Such rules are published in the annual Bow Mar Directory and may be referenced or modified in the Bow Mar Bulletin from time to time.

1. *Guest Privileges:* All members and members of their immediate family residing with them, may invite guests to use those corporate recreational facilities which the member is entitled to use, provided all compliance with current rules and regulations regarding guest privileges upon payment of such fees as the Board of Directors may determine from time to time; and provided further that in no event may a member invite a guest who resides in Bow-Mar who is not a member of B.M.OI.

2. All requests regarding special functions and beach parties requiring approval from the Board of Directors must be submitted to the Board in writing no later than the regular meeting prior to the date requested.

## **IX. SUSPENSION OF MEMBERSHIP**

1. *Suspension of Membership by Board of Directors:* The Board of Directors shall have the power to withdraw any privilege of membership, including the privilege of using corporate property, if in the opinion of the Board, a member, a member of his or her immediate family or guest has flagrantly violated any of the regulations of the Corporation or the member is delinquent in paying his or her annual dues. The term of such suspension shall be left to the sole discretion of the Board of Directors.

2. *Temporary Suspension by a Director or Authorized Representative of the Board of Directors:* Any director or authorized representative of the Board of Directors shall have the power to suspend temporarily the privilege of using corporate facilities from any member, member of his or her immediate family or guest where such person or persons are found to have flagrantly violated any of the rules and regulations of the Corporation. Such temporary suspension must be in writing, signed by the one exercising such authority, and directed to the member involved or under whose membership the person or persons involved enjoy the use of corporate facilities. The President of the Board of Directors must be notified immediately of all such temporary suspensions by the person exercising authority. Such temporary suspension shall not extend, in any event, beyond the next regular meeting of the Board of Directors. Any suspension beyond this period of time must be by action of the Board of Directors.

## **X. COMMITTEES**

1. *Membership Committee:* The President, with the approval of the Board of Directors, may appoint a membership committee to exercise such powers and duties as may be assigned to such committee by the Board of Directors from time to time.

2. *Nominating Committee:* A nominating committee composed of resident members not currently serving on the Board of Directors shall be appointed by the President with the approval of the Board of Directors. It shall be the duty of this committee to provide a slate of worthy candidates for election to the Board of Directors at the annual meeting. Names of the candidates selected by the committee shall be made known to the membership at the same time notice is given of the annual meeting.

3. *Budget and Review Committee:* The President, with the approval of the Board of Directors, shall appoint a budget and review committee of five voting members, not more than three of whom may be current members of the Board of Directors. The committee shall prepare an annual budget for submission to the Board at its regular September meeting and shall, during the month of October, make an annual review of the books and accounts of the Corporation in such a manner as the Board of Directors deems necessary and desirable. The review report of the committee shall be made available for inspection by members at their annual meeting in November.

4. *Sailing Committee and Tennis Committee.* All organized sailing events are sponsored by the Bow Mar Yacht Club (BMYC), the officers of which serve as the Sailing Committee.

All organized tennis events are sponsored by the Bow Mar Tennis Club (BMTC), the officers of which serve as the Tennis Committee.

The Board of Directors may from time to time appoint one or more members of the Corporation to serve on these committees.

The Board of Directors may delegate to these committees the authority to schedule events on facilities owned by the Corporation and to collect such additional voluntary dues from members of the Corporation to support such club activities as the committees determine is beneficial to their respective members.

Membership in the clubs shall be restricted to members of this Corporation

5. *Architectural Control Committee:* The Board of Directors shall appoint an architectural control committee. The committee shall review and approve plans for construction of new homes, modifications of existing homes and erection of fences as well as landscaping plans and modifications. It shall be the duty of this committee to make certain that such plans meet acceptable standards of aesthetic harmony.

6. *Other Committees:* The President, with the approval of the Board of Directors, may appoint any committee or committees for any purpose. Such committees shall have and exercise only such powers as have been specifically authorized by the Board, but the Board may not delegate to any committee the power to promulgate rules and regulations governing the use of corporate property; such rule making power shall be exercised solely by the Board and not by any other entity.

## **XI. BUSINESS POLICIES**

1. *Fiscal Year:* The fiscal year of the Corporation shall start October 1 of each year and shall end September 30 of the following year.

2. *Indebtedness:* No officer, committee, agent or member is authorized to incur any debt or obligation on behalf of the Corporation, except by specific authority granted by the Board of Directors.

3. *Depository for Funds:* All funds of the Corporation not otherwise employed shall be deposited to the credit of the Corporation as soon as practicable in such banks, trust companies, or other custodians as the Board of Directors may select. The Board of Directors shall have the authority to designate any bank, trust company, brokerage firm, or investment advisor to manage, invest, and maintain the custody of the assets of the Corporation.

4. *Loss of Property*: The Corporation shall not be liable or responsible for the destruction or loss of, or damage to the property of any member, or the guest of any member, or visitor, or other person, whether such property consists of clothing or other articles, or whether the same be in lockers or elsewhere around the corporate grounds or buildings; but the Corporation, through the Board of Directors, may nevertheless, in the sole discretion of the Board of Directors, account for articles lost or damaged.

5. *Corporate Seal*: The Board of Directors shall provide a suitable seal containing the name of the Corporation and the words "Colorado" and "Seal", and said seal shall remain in the custody of the Secretary.

6. *Execution of Written Documents*: All written obligations of the Corporation, including acceptances, contracts, agreements, deeds, and all other instruments of writing, shall be signed with the corporate name by the President, or in his or her absence, by the Vice-President, unless prior specific authority to sign specific documents for a specific purpose shall have been given to other officers or agents by resolution of the Board of Directors. The Secretary shall countersign, attest and affix the corporate seal on such documents required by law to be executed by him or her or under the corporate seal.

7. *Checks*: All checks drawn on corporate funds shall be signed by two signatories authorized by the Board.

## **XII. INDEMNIFICATION.**

1. *Definitions*. For purposes of this Article:

[a] The terms "director or officer" shall include a person who, while serving as a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, other enterprise, or employee benefit plan. A director or officer shall be considered to be serving an employee benefit plan at the request of the Corporation if his or her duties to the Corporation also impose duties on or otherwise involve services by him or her to the plan or to participants in or beneficiaries of the plan. The term "director or officer" shall also include the estate or personal representative of a director or officer, unless the context otherwise requires.

[b] The term "proceeding" shall mean any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, whether formal or informal, any appeal in such an action, suit, or proceeding, and any inquiry or investigation that could lead to such an action, suit, or proceeding.

[c] The term "party" includes an individual who is, was, or is threatened to be made a named defendant or respondent in a proceeding.

[d] The term "liability" shall mean any obligation to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to an employee benefit plan), or reasonable expense incurred with respect to a proceeding.

[e] When used with respect to a director, the phrase "official capacity" shall mean the office of director in the Corporation, and, when used with respect to a person other than a director, shall mean the office in the Corporation held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the Corporation, but in neither case shall include service for any foreign or domestic corporation or for any partnership, joint venture, trust, employee benefit plan, or other enterprise.

2. *General Provisions.* The Corporation shall indemnify any person who is or was a party or is threatened to be made a party to any proceeding by reason of the fact that such person is or was a director or officer of the Corporation, against expenses (including attorneys' fees), liability, judgments, fines, and amounts paid in settlement actually and reasonably incurred by such person in connection with such proceeding if such person [a] conducted himself in good faith, [b] reasonably believed, in the case of conduct in his or her official capacity with the Corporation, that his or her conduct was in the best interests of the Corporation, and, in all other cases, that his or her conduct was at least not opposed to the best interests of the Corporation, and [c] with respect to any criminal proceeding, had no reasonable cause to believe that his or her conduct was unlawful. However, no person shall be entitled to indemnification under this Section 2 either [a] in connection with a proceeding brought by or in the right of the Corporation in which the director or officer was adjudged liable to the Corporation or [b] in connection with any other proceeding charging improper personal benefit to the director or officer, whether or not involving action in his or her official capacity, in which he or she is ultimately adjudged liable on the basis that he or she improperly received personal benefit. Indemnification under this Section 2 in connection with a proceeding brought by or in the right of the Corporation shall be limited to reasonable expenses incurred in connection with the proceeding. The termination of any action, suit, or proceeding by judgment, order, settlement, or conviction or upon a plea of nolo contendere or its equivalent shall not of itself create a presumption that the person did not act in good faith or otherwise failed to meet the standard of conduct set forth in this Section 2.

3. *Successful Defense on the Merits; Expenses.* To the extent that a director or officer of the Corporation has been wholly successful on the merits in defense of any proceeding to which he or she was a party, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with such proceeding.

4. *Determination of Right to Indemnification.* Any indemnification under Section 2 of this Article (unless ordered by a court) shall be made by the Corporation only as authorized in each specific case upon a determination that indemnification of the director or officer is permissible under the circumstances because such person met the applicable standard of conduct set forth in such Section 2. Such determination shall be made [a] by the Board of Directors by a majority vote of a quorum of disinterested directors who at the time of the vote are not, were not, and are not threatened to be made parties to the proceeding, or [b] if such a quorum cannot be obtained, by the vote of a majority of the members of a committee of the Board of Directors

designated by the board, which committee shall consist of two or more directors who are not parties to the proceeding (directors who are parties to the proceeding may participate in the designation of directors to serve on such committee), or [c] if such a quorum of the Board of Directors cannot be obtained or such a committee cannot be established, or even if such a quorum is obtained or such a committee is so designated, but such quorum or committee so directs, then by independent legal counsel selected by the Board of Directors in accordance with the preceding procedures, or [d] by the members. Authorization of indemnification and evaluation as to the reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that, if the determination that indemnification is permissible is made by independent legal counsel, authorization of indemnification and evaluation of legal expenses shall be made by the body that selected such counsel.

5. *Advance Payment of Expenses; Undertaking to Repay.* The Corporation shall pay for or reimburse the reasonable expenses (including attorneys' fees) incurred by a director or officer who is a party to proceeding in advance of the final disposition of the proceeding if [a] the director or officer furnishes the Corporation a written affirmation of his or her good faith belief that he or she conducted himself in good faith, [b] the director or officer furnishes the Corporation with a written undertaking, executed personally or on his or her behalf, to repay the advance if it is determined that he or she did not conduct himself in good faith, which undertaking shall be an unlimited general obligation of the director or officer but which need not be secured and which may be accepted without reference to financial ability to make repayment, and [c] a determination is made by the body authorizing indemnification that the facts then known to such body would not preclude indemnification.

6. *Reports to Members.* In the event that the Corporation indemnifies, or advances the expenses of, a director or officer in accordance with this Article in connection with a proceeding by or on behalf of the Corporation, a report of that fact shall be made in writing to the members with or before the delivery of the notice of the next meeting of the members.

7. *Other Employees and Agents.* The Corporation shall indemnify such other employees and agents of the Corporation to the same extent and in the same manner as is provided above in 2 with respect to directors and officers, by adopting a resolution by a majority of the members of the Board of Directors specifically identifying by name or by position the employees or agents entitled to indemnification.

8. *Insurance.* The Board of Directors may exercise the Corporation's power to purchase and maintain insurance (including without limitation insurance for legal expenses and costs incurred in connection with defending any claim, proceeding, or lawsuit) on behalf of any person who is or was a director or officer of the Corporation against any liability asserted against him or her or incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify him or her against such liability under the provisions of this Article.

9. *Nonexclusivity of Article.* The indemnification provided by this Article shall not be deemed exclusive of any other rights and procedures to which one indemnified may be

entitled under the Articles of Incorporation, any bylaw, agreement, resolution of disinterested directors, or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director or officer, and shall inure to the benefit of such person's heirs, executors, and administrators.

### **XIII. BY-LAWS INTERPRETATION AND AMENDMENT**

1. *Interpretation:* The Board of Directors shall have full power and authority to interpret these By-Laws, and its decision on all questions shall be final, binding and conclusive.

2. *Amendment by Members:* These By-Laws, or any paragraph or section thereof, may be amended or repealed in whole or part by a majority of the members present or represented by proxy at any annual or special membership meeting called for such purpose.

3. *Amendment by Board of Directors:* The Board of Directors, by a majority vote of the entire Board, may amend or repeal these By-Laws, or any part thereof at any regular or special meeting of the Board. Amendments adopted at such a meeting shall be operative upon their adoption and shall continue in full force and effect until they shall be further amended or repealed by the Board or the membership as herein provided.

I certify that the preceding Bylaws of Bow-Mar Owners, Inc. were amended and restated in their entirety by the Board of Directors on the 19th day of October, 2000.

/s/ Peggy  
Zarlengo  
Peggy Zarlengo, Secretary